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Oct 2. 1878

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~870.~~ 78 ~~327~~ 766

H. J. ANTHONY, THOMAS E. PRICE, AND WILLIAM SMITH, COMMISSIONERS OF THE COUNTY OF PICKENS, PLAINTIFFS IN ERROR,

vs.

THE BANK OF COMMERCE OF RICHMOND, VIRGINIA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED DECEMBER 11, 1875.

Leave to allow

SUPREME COURT OF THE UNITED STATES.

No. 870.

H. J. ANTHONY, THOMAS R. PRICE, AND WILLIAM SMITH, COMMISSIONERS OF THE COUNTY OF PICKENS, PLAINTIFFS IN ERROR,

vs.

THE BANK OF COMMERCE OF RICHMOND, VIRGINIA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

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1 THE UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit, to wit:

At a circuit court of the United States for the fourth circuit, in and for the district of South Carolina, begun and to be holden at Charleston, in the district aforesaid, on the first Monday in April, A. D. 1874, before the honorable Hugh L. Bond, circuit judge, and the honorable George S. Bryan, district judge of the said United States, for the circuit and district aforesaid, holding said circuit court according to the form of the act of Congress in such case made and provided, the following proceedings were had:

THE BANK OF COMMERCE, RICHMOND, VIRGINIA, plaintiff,
vs.
H. J. ANTHONY, THOS. D. PRICE, WILLIAM SMITH, county commissioners of the county of Pickens, defendants.

Be it remembered that heretofore, to wit, the fourteenth day
2 of February, A. D. 1874, the said Bank of Commerce, Richmond, Virginia, issued its summons and complaint against the said H. J. Anthony, Thos. R. Price, and William Smith, county commissioners of the county of Pickens, in an action for money demand, as follows:

Summons.

In circuit court.

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

THE BANK OF COMMERCE, RICHMOND, VIRGINIA, plaintiff,
against
H. J. ANTHONY, THOS. R. PRICE, AND WILLIAM SMITH, county commissioners of the county of Pickens, defendants.
Summons for money demand.

To H. J. Anthony, Thomas R. Price, and William Smith, county commissioners of the county of Pickens, defendants in this action:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to
3 serve a copy of your answer on the subscribers at their office, at Greenville, S. C., within twenty days after the service of this summons on you, exclusive of the day of service.

If you fail to answer this complaint within the time aforesaid, the plaintiff will apply to the court for judgment against you for the sum of seven thousand dollars, with interest at the rate of seven per cent., from the first day of January, one thousand eight hundred and seventy-four, and costs. Dated 14th of February, 1874.

EARLE & BLYTHE,
Plaintiff's Attorney.

J. E. HAGOOD, [SEAL.]
C. C. C. U. S. Dist. of S. C.

REC. 870—1

Complaint.

In circuit court.

UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

THE BANK OF COMMERCE, RICHMOND, VIRginia, plaintiff,
vs.
J. H. ANTHONY, THOMAS R. PRICE, WILliam Smith, county commissioners of the county of Pickens, defendants.

Action for payment of coupons.

The plaintiff, a corporation by and under the laws of the Commonwealth of Virginia, and doing business in the city of Richmond, in the State of Virginia, complaining of the defendants, citizens of the State of South Carolina, for cause of action shows as follows:

I. That it is the bona-fide holder and owner of a lot of coupons for the payment of interest on bonds, which purport to have been issued by the defendants in aid of the Atlanta and Richmond Air-Line Railway Company, under an act of the general assembly of the State of South Carolina authorizing the same, and it is informed and believes such to be the case.

II. That the said coupons are for different sums of money, depending on the size of the bonds, and are in the form following, to wit:

"$7.00. The County of Pickens, State of South Carolina, will pay the bearer on the 1st day of January, 1874, seven dollars, at Pickens Court-House, for annual interest on bond No. 118.

"H. J. ANTHONY,
"*Chairman of Board of County Commissioners.*

"Receivable in payment of taxes."

III. That of these coupons the plaintiff is the true and real owner of seven thousand dollars' worth, for value, which were due on the first day of January, A. D. 1874, and the whole thereof remain and are unpaid, though the payment has been demanded.

Wherefore the plaintiff brings this suit, and demands judgment for the sum of seven thsusand dollars with interest thereon from the first day of January, A. D. 1874, together with the costs of this action.

JOHN C. WILLIAMS,
Cashier Bank of Commerce.

STATE OF VIRGINIA,
City of Richmond:

Plaintiff in this action being duly sworn, says that the foregoing complaint is true of his own knowledge, except as to those matters which are therein stated to be on his information or belief, and as to those matters he believes it to be true.

Sworn to before me this 12th day of February, A. D. 1874, at Richmond, Va.

JNO. H. HAMPTON,
Not. Pub.

Marshal's return.

And on the 26 day of February, 1874, the marshal makes his return of service in the words following, to wit:

THE BANK OF COMMERCE, RICHMOND, VA.,
vs.
H. J. ANTHONY, THOS. R. PRICE, WM. SMITH, county commissioners of Pickens County.

THE STATE OF SOUTH CAROLINA,
County of Pickens:

I hereby certify that on the 26th day of Feb'y, 1874, at Pickens C. H., S. C., by my deputy, J. A. McKee, I served on the herein named H. J. Anthony, Thos. R. Price, & Wm. Smith the summons & complaint in this action by delivering copies thereof to each of them and
7 leaving the same with them.

R. M. WALLACE,
U. S. Marshal.

Marshal's cost:

Service, 295 miles, at 6	$17 70
3 services	6 00
Entry	25
	$23 95

(Indorsements on summons:) United States of America, fourth circuit, district of South Carolina. The Bank of Commerce, Richmond, Va., plaintiff, against H. J. Anthony, Thos. R. Price, William Smith, county comrs. of Pickens County, defendants.

And on the 14th day of April, 1874, came into court Messrs. Earle and Blythe, attorneys for plaintiff, and J. J. Norton, attorneys for the defendant, and filed the following agreement, which agreement is in the words and of the tenor following:

8 In circuit court.

UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

THE BANK OF COMMERCE, RICHMOND, VIRginia, plaintiff,
against
H. J. ANTHONY, THOS. R. PRICE, WM. SMITH, county commissioners of the county of Pickens, defendants.
} Action for payment of coupons.

Agreement.

It is agreed between Earle & Blythe, attys. for the plaintiff, and J. J. Norton, atty. for defendant, that the plaintiff have leave to amend his complaint and summons in this action by inserting seven thousand dollars instead of three thousand five hundred dollars, wherever these words occur therein, and that the defendants have until the first day of

April next to file their pleas, answers, or demurrers, without prejudice to trial at the ensueing term of the court.

EARLE AND BLYTHE.
J. J. NORTON.

PICKENS C. H., S. C., *March* 7, 1874.

And on the 14th day of April, A. D. 1874, came into the court
9 the defendants, H. J. Anthony, Thomas R. Price, and William Smith, county commissioners of Pickens County, by their attorney, J. J. Norton, and filed the following answer, which is in the words and of the tenor following:

In the circuit court.

Answer.

THE UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

THE BANK OF COMMERCE, Richmond, Virginia, plaintiff,
vs.
H. J. ANTHONY, THOS. R. PRICE, AND WM. Smith, county commissioner' of the county of Pickens, defendants.
} Answer.

Answer.

The defendants, answering the complaint herein, allege:

1st. That the statements thereof are true, except as modified by this answer.

II. That defendants, as county commissioners of Pickens County, agreed to issue one hundred thousand dollars of bonds in payment of the subscription made by their predecessors in office for the said county, to the capital stock of the Atlanta & Richmond Air-Line Railway Company.

10 III. That, under the advice and personal superintendance of the then solicitor of said company*s*, defendant H. J. Anthony, chairman, and S. D. Keith, clerk of the board of county commissioners, in the absence of the other defendants, signed, sealed, and delivered said bonds, which are the ones referred to in the first paragraph of plaintiff's complaint.

IV. That the signature of H. J. Anthony to the coupons of said bonds was written by various persons, which coupons include those sued for by the plaintiff.

V. That defendants are ignorant whether plaintiff is the lawful owner of the coupons sued, and whether it is a body corporate, as alleged in the complaint.

J. J. NORTON,
Deft.'s Atty.

THE STATE OF SOUTH CAROLINA,
County of Pickens:

Personally came H. J. Anthony, Thos. R. Price, & Wm. Smith, be-

fore me, and made oath that the statements made in this answer as of their own knowledge are true, and all others they believe to be true.

H. J. ANTHONY, *Chairman.*
T. R. PRICE,
WM. SMITH.

Sworn to & subscribed before me, 27th March, 1874,
[SEAL.] S. D. KEITH, *C. C. P.*

11 And at the said April term, 1874, of the said court, the said parties came into the court, by their attorneys aforesaid, and the cause was heard upon the pleadings and processes, no evidence having been introduced by either of the parties to the suit, when, on motion of Earle & Blythe, attorneys for the plaintiff, the fourth paragraph of the defendant's answer were stricken out. And the defendant's attorney, J. J. Norton, asked the court to instruct the jury as follows: "That the bonds, being signed by only one of the county commissioners, are void, and the coupons sued on are therefore void." Refused.

HUGH L. BOND,
Ct. Judge.

And under the instructions of the court the jury rendered the following verdict, which verdict is in the words and tenor following, viz:

"We find for the plaintiffs seven thousand one hundred and thirty-two $\frac{75}{100}$ dollars.
"Apl. 14, 1874.

"GEO. W. WILLIAMS,
"*Foreman.*"

And on the 28th day of April, A. D. 1874, at 12 m., came into the court the Bank of Commerce, plaintiff, by their attorneys, Earle & Blythe,
12 and filed their judgment on the verdict of the jury; which said judgment is in the words and tenor following:

In the circuit court.

Judgment.

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

THE BANK OF COMMERCE, RICHMOND, VA., plaintiff,
against
H. J. ANTHONY, THOMAS R. PRICE, & WILLIAM SMITH, county commissioners Pickens County, defendants.
} Judgment on verdict.

The issues in this action having been brought on for trial before Mr Justices Bond and Bryan and a jury, at a circuit court held on the first Monday of April, 1874, and the issues having been tried, and a verdict for the plaintiff having been duly rendered on the fourteenth day of April, 1874, and their costs having been adjudged at fifty-three $\frac{45}{100}$ dollars:

Now, on motion of Earle & Blythe, attorneys for said plaintiffs,
13 it is adjudged that said plaintiffs recover of said defendants the

sum of seven thousand one hundred and thirty-two $\frac{75}{100}$ dollars, found by the jury, with fifty-three $\frac{45}{100}$ dollars costs.

EARLE & BLYTHE,
Plaintiff's Attorneys.

Taxed costs signed. Judg't, 28 April, 1874.
[SEAL.]

J. E. HAGOOD,
C. C. C. U. S. Dist. of S. C.

(Endorsements on judgment:) United States of America, district of South Carolina, fourth circuit. The Bank of Commerce, Richmond, Va., plaintiffs, against H. J. Anthony, Thomas R. Price, William Smith, county coms., Pickens County, defendants. Judgment on verdict. Earle & Blythe, plff's attorney. Amount and interest, $7,132.75; costs
14 and disbursements, 53.45—$7,186.20. Filed 28 Apl., 1874, at 12 o'clock m. J. E. Hagood, C. C. C. U. S. dist. of S. C.

And on the first day of November, 1875, came into the court the defendants, H. J. Anthony, Thomas R. Price, and William Smith, county commissioners of the county of Pickens, by their attorney, J. J. Norton, and filed the following assignment of error; which is in the words and the tenor following:

In the circuit court.

Assignment of error.

UNITED STATES OF AMERICA,
Fourth Circuit, District of South Carolina:

THE BANK OF COMMERCE, RICHMOND, VA., plaintiff, *against* H. J. ANTHONY, THOS. R. PRICE, AND WILLIAM SMITH, county commissioners of the County of Pickens, defendants.	Complaint on money demand.

The defendants except to said proceedings and judgment, on
15 the following grounds, and assign as error therein:

I. That the court struck out the fourth paragraph of defendant's answer.

II. That the court refused to instruct the jury that the bonds, being signed by only one of the county commissioners, are void; and the coupons are, therefore, void.

III. That the pleadings herein show that the defendants are not liable as individuals on the coupons sued herein, and that they were so sued, and judgment so rendered against them.

IV. That the county of Pickens could not have been authorized, under the constitution of this State, by its legislature, to have created the obligation which the coupons sued purport to have created.

V. That the legislature of South Carolina has not authorized the county of Pickens to issue bonds in payment of subscription to the capital stock of the Atlanta and Richmond Air-Line Railway Company.

VI. That the coupons sued, if otherwise legal, are void, having been signed by only one of the county commissioners of said county.

J. J. NORTON,
Defendants' Attorney.

16 And on the 1st day of November, A. D. 1875, came into court the defendants, H. J. Anthony, Thomas R. Price, and William Smith, county commissioners of the county of Pickens, by their attorney, J. J. Norton, and filed the following writ of error; which writ is in the words and tenor following:

In the circuit court.

Writ of error.

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

THE BANK OF COMMERCE, PLAINTIFF,
against
H. J. ANTHONY, THOMAS R. PRICE, AND WILLIAM SMITH, county commissioners of the county of Pickens, defendants.

UNITED STATES OF AMERICA, *to wit:*

The President of the United States to the judges of the circuit court of the United States for the fourth district, in and for the district of South Carolina, greeting:

17 Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said court before you, between the Bank of Commerce, Richmond, Virginia, plaintiff, and H. J. Anthony, Thomas R. Price, and William Smith, defendants, a manifest error hath happened, to the great damage of the said H. J. Anthony, William Smith, and Thomas R. Price, as by complaint appears: We, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the first Monday in December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said *circuit* Court may cause further to be done therein, to correct that error, which of right and according
18 to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this first Monday of December, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.]

J. E. HAGOOD,
C. C. C. U. S. Dist. of S. C.

And on the 1st day of November, A. D. 1875, came into court the defendants, H. J. Anthony, Thomas R. Price, and William Smith, county commissioners of the county of Pickens, by their attorney, J. J. Norton, and obtained the following citation; which citation is in the words and tenor following:

Citation.

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

THE BANK OF COMMERCE, PLAINTIFF,
against
H. J. ANTHONY, THOMAS R. PRICE, AND William Smith, county commissioners of the county of Pickens, defendants.

The President of the United States of America, to wit, to the Bank of Commerce:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden in the city of Washington on the 1st Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of South Carolina, wherein the said H. J. Anthony, William Smith, and Thomas R. Price are plaintiffs and the Bank of Commerce is defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable George S. Bryan, one of the judges of the courts of the United States for South Carolina, this first day of November, in the year of our Lord one thousand eight hundred and seventy-five.

20 GEO. S. BRYAN,
U. S. Judge Dist. of So. Ca.

Marshal's return.

THE BANK OF COMMERCE
vs.
H. J. ANTHONY ET AL.

STATE OF SOUTH CAROLINA,
County of Greenville:

J. T. Steele, being duly sworn, says that he served the copy of the within notice upon W. E. Earle, esq., by delivering to him personally the same, leaving with him the copy of the same, at Greenville, So. Ca., on the fifth day November, A. D. 1875, and that he knows the person so served to be W. E. Earle, esq., and the deponent is not a party to the action.

JAS. T. STEELE.

Sworn to & subscribed before me this fifth day of November, A. D. 1875.

WHITNER SYMMES,
U. S. Commr.

21 And on the 1st day of November, A. D. 1875, came into court the defendants, H. J. Anthony, Thomas R. Price, and William Smith, county commissioners of the county of Pickens, by their attorney, J. J. Norton, and filed the following bond, which bond is in the words and tenor following:

Bond.

THE UNITED STATES OF AMERICA:

Know all men by these presents that we, H. J. Anthony, Thomas R. Price, and Wm. Smith, principles, and S. D. Keith and J. H. Philpot, sureties, are held and firmly bound unto "The Bank of Commerce" in the full and just sum of two hundred dollars, to be paid to the said "The Bank of Commerce," its successors and assigns, to which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents, sealed with our seals and dated this 27th day of October, in the year of our Lord one thousand eight hundred and seventy-five.

22 Whereas, lately at a circuit court of the United States for the fourth circuit, in and for the district of South Carolina, in a suit pending in said court between "The Bank of Commerce," plaintiff, and H. J. Anthony, Thomas R. Price, and Wm. Smith, defendants, judgment was, on the day of , 1875, rendered against the said H. J. Anthony, Thomas R. Price, and Wm. Smith; and the said H. J. Anthony, Thomas R. Price, and Wm. Smith have sued out a writ of error to the Supreme Court of the United States, and to reverse the judgment in the aforesaid suit, and have filed a copy of said writ in the office of the clerk of the said circuit court, and a citation directed to the said "The Bank of Commerce," citing and admonishing it to be and appear at a Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next: Now, the condition of the above obligation is such that if the said H. J. Anthony, Thomas R. Price, and William Smith shall prosecute their said writ of error to effect, and answer all damages and costs if they shall

23 fail to make their plea good, then the above obligation to be void, or else to remain in full force and virtue.

H. J. ANTHONY. [SEAL.]
WM. SMITH. [SEAL.]
T. R. PRICE. [SEAL.]
S. D. KEITH. [SEAL.]
J. H. PHILPOT. [SEAL.]

Sealed & delivered in the presence of—
J. RILEY FERGUSON,
C. L. HOLLINGSWORTH.

Affidavit.

UNITED STATES OF AMERICA,
Fourth Circuit, District of North Carolina, ss:

Stephen D. Keith, one of the sureties and subscribers to the foregoing undertaking, being duly sworn, says that he is a resident and freeholder within this district, and is worth the sum of two hundred dollars over all his debts and liabilities, and exclusive of property exempt by law from execution.

S. D. KEITH.

Sworn to before me, this the 28th day of October, 1875.

JOHN L. THORNLEY,
Com. U. S. Courts, S. C.

24 In the circuit court.

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

I, J. E. Hagood, clerk of the circuit court of the United States for the district of South Carolina, do hereby certify that the foregoing is a true and correct copy of the records and proceedings in the case of the Bank of Commerce, Richmond, Va., plaintiff, against H. J. Anthony, Thomas R. Price, and William Smith, county commissioners of Pickens County, defendants, rendered as aforesaid, together with all things relating to the same.

Given under my hand and the seal of said court, at clerk's office, in the city of Columbia, for the district aforesaid, this the 8th day of December, A. D. 1875.

[SEAL.]

J. E. HAGOOD,
C. C. C., U. S. Dist. of S. C.

(Indorsement on cover:) No. 870. H. J. Anthony, Thomas R. Price, and William Smith, commissioners, county of Pickens, pl'ffs in error, vs. The Bank of Commerce, Richmond, Va. So. Carolina C. C. U. S. Filed 11th December, 1875.

